
IN THE
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-933

ROBERT A. McAULIFFE,

Petitioner,

v.

ADOLF G. CARLSON, Commissioner of Finance and Control
of the State of Connecticut,

Respondent,

**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

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The respondent opposes the petitioner's request that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on August 1, 1975.

QUESTIONS PRESENTED

1. Does the Eleventh Amendment preclude an action in federal courts against a state official for money taken pursuant to the terms of statutes held to be unconstitutional?
2. Was that Eleventh Amendment immunity waived in this case?

CONSTITUTIONAL PROVISION INVOLVED

The Eleventh Amendment to the United State Constitution provides:

The judicial power of the United States shall not be construed to extend to any suit in law or in equity, commenced or prosecuted against one of the United States by citizens of another State, or by Citizens or Subjects of any Foreign State.

STATEMENT OF THE CASE

This was an action for a declaratory judgment declaring unconstitutional Sections 17-318 and 4-68g of the Connecticut General Statutes, and requesting return of all property taken from the plaintiff pursuant to those statutes. Relevant portions of these statutes are:

"Sec. 17-318. Payment of hospital expense of inmate transferred from correctional institution. When any person has been transferred from the Connecticut Correctional Institution, Somers, the Connecticut Correctional Institution, Niantic, or its maximum security division, or the Connecticut Correctional Institution, Cheshire, to a state hospital, such person's hospital expense prior to the termination of his sentence shall be charged to the state. When any person has been transferred from a community correctional center to a state hospital, such person's hospital expense prior to the termination of his sentence shall be paid out of the estate of such person . . ."

"Sec. 4-68g. (Formerly Sec. 17-21). Conservators for mentally ill or mentally retarded persons supported by the state. Whenever any person having property or an interest in property is committed or admitted to a state institution for the mentally ill or mentally retarded or, subse-

quent to such commitment or admission, acquires property or an interest in property, and the property is personal property of any kind or nature, not in excess of five thousand dollars, or annual income not in excess of said amount, no guardian or conservator shall be appointed, and the commissioner of finance and control shall be the guardian or conservator of such person, without court proceedings, only for the purposes hereinafter specified. . . . Said commissioner shall hold or use such property or funds for the support and benefit of such person in the same manner as a duly appointed conservator, and shall maintain records of such property or funds and the disposition thereof . . ."

Plaintiff had been convicted of violating Section 53-75 of the Connecticut General Statutes (breaking and entering) on August 26, 1971 and was sentenced to a term of 360 days in the Hartford Correctional Center. On September 21, 1971, the Commissioner of Corrections transferred plaintiff to the Security Treatment Center in Middletown, a mental health facility; plaintiff remained there for 218 days until April 26, 1972, during which period he was serving his sentence. On June 30, 1972, the Commissioner of Finance and Control, respondent herein, billed plaintiff \$1,098.07 for his confinement at the Security Treatment Center pursuant to Section 17-318 of the Connecticut General Statutes as amended and collected this amount from social security disability benefits the defendant was holding as representative payee of the plaintiff.

Petitioner had placed \$150.00 in his hospital account at Norwich Hospital, another mental health facility, while confined there in December of 1972. This money was taken by the Commissioner of Finance and Control, the defendant herein, as statutory conservator pursuant to Section 4-68g of the Connecticut General Statutes as amended.

In the first instance, the sum of \$1,098.07 was used by the state to pay for petitioner's hospital expense at the Security Treatment Center; in the second instance, \$150.00 was used to pay for his stay at the Norwich hospital.

By judgment entered May 30, 1974, 377 F. Supp. 896 (D. Conn. 1974), both statutes were declared unconstitutional. No appeal was taken from that judgment.

On January 16, 1975, the district court ordered entry of judgment against the respondent for the two sums of \$1,098.07 and \$150.00, plus interest. On August 1, 1975, the court of appeals reversed that order.

ARGUMENT

THE SECOND CIRCUIT'S DECISION DOES NOT CONFLICT WITH DECISIONS OF THE SUPREME COURT.

The Supreme Court cases cited by the Second Circuit to support its decision were *Ford Motor Company v. Department of Treasury*, 323 U.S. 459 (1945) and *Edelman v. Jordan*, 415 U.S. 651 (1974). It would require a reversal of both cases to warrant a finding for the petitioner.

In *Ford Motor*, supra, the petitioner brought suit against the Department of Treasury of the State of Indiana, and various officials, seeking a refund of gross income taxes paid to that department. The Supreme Court decided not to pass upon the merits of the case, concluding that the petitioner's action could not be maintained in a federal court for want of consent by the State to that suit. It was of no concern to the Supreme Court, within the scope of that case, that the State statute might have been unconstitutional, that payments thereunder might never have been due the State, and that the funds

exacted from the petitioner might never have accrued to its benefit.

It is clear that the Eleventh Amendment immunity applies regardless of the manner in which petitioner's property has been taken or used. In any case, action by Federal courts is proscribed by the Amendment.

Edelman, supra, concerned a class action brought against various state and county officials of Illinois, alleging that these officials were administering federal-state programs of Aid to the Aged, Blind and Disabled (AABD) in a fashion inconsistent with federal regulations and the Fourteenth Amendment to the Constitution. The plaintiffs complained that the officials, in pursuing erroneous regulations, were violating federal law and were denying them equal protection of the laws. They prayed for declaratory and injunctive relief requesting an award to the entire class of plaintiffs of all AABD benefits "wrongfully withheld".

Both District Court and United States Circuit Court of Appeals for the Seventh Circuit found for the plaintiffs. The Supreme Court granted certiorari because of an apparent conflict on the Eleventh Amendment issue between that decision and *Rothstein v. Wyman*, 467 F.2d 226 (1972), Court of Appeals for the Second Circuit. The Supreme Court reversed that portion of the decision which had ordered the payment of retroactive benefits by Illinois state officials.

Referring to *Ford Motor*, the Supreme Court stated:

"The taxpayer claimed that the tax had been imposed in violation of the United States Constitution. The term 'equitable restitution' would seem even more applicable to the relief sought in that case, since the taxpayer had at one time had the money, and paid it over to the State pursuant to an allegedly unconstitutional tax exaction.

Yet this Court had no hesitation in holding that the taxpayer's action was a suit against the State, and barred by the Eleventh Amendment. We reach a similar conclusion with respect to the retroactive portion of the relief awarded by the District Court in this case." 668, 669.

McAuliffe, the petitioner, complains that money which at one time was either owed to him, or in his possession, was taken from him pursuant to statutes later determined to be unconstitutional. (It is not claimed that these funds were not used for his benefit). He now seeks the return of that money through the intercession of the Federal courts. It is clear that the Second Circuit has correctly followed the course laid down in *Ford Motor* and *Edelman* in denying that request.

The Petitioner claims as a second question on page 2 of his petition: "If the Eleventh Amendment confers immunity from such an action, was that immunity waived in this case?" He did not brief this matter, and, presumably is not pursuing it. Respondent's position is that there was no waiver.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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